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SUPREME COURT, U.S.

No. 81 6629

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

VLADIMIR N. ETLIN

APPELLANT

v.

CHARLES ROBB (GOVERNOR OF VIRGINIA)

GERALD BALES (ATTORNEY GENERAL OF VIRGINIA)

LEWIS H. GRIFFITH (JUDGE)

APPELLES

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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CHARLES ROBB

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APPELLEES

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Appellant, Vladimir H. Etlin, pro se, respectfully prays that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Fourth Circuit entered on December 30, 1981 denying Appellant's request for declaratory judgement and preliminary and permanent injunctive relief, enjoining enforcement of the order of the Circuit Court of Fairfax County, in which Appellant's Fifth, Thirteenth and Fourteen Amendment rights were violated, and request for damages as well.

OPINION BELOW

The Court of Appeals entered its decision (App. 1) on December 30, 1981 affirming of the District Court decision (App.2) to abstain from hearing of the matters raised by the Appellant. The Appellant's petition for rehearing (App. 3) was denied by the Court of Appeals (App. 4) on February 2, 1982.

CONSTITUTIONAL AND OTHER PROVISIONS INVOLVED

The United States Constitution, Amendment I:

> Congress shall make no law ... prohibiting the free exercise thereof; ... to petition the Government for a redress of grievances.

Amendment V:

> ... nor shall any person ... be deprived of life, liberty, or property, without due process of law...

Amendment XIII:

> Neither slavery nor involuntary servitude, ... shall exist within the United States,...

Amendment XIV:

> ... nor shall any State ... deny to any person within its jurisdiction the equal protection of the laws.

While there is still reason to believe that positive, nurturing parent-child relationships exist, the parents partial interest favors preservation, not severance, of natural familiar bonds. Soc. Serv. Law #384-b.1. (a) (ii)

JURISDICTION

On February 2, 1982 the Court of Appeals denied the Appellant's petition for rehearing. (App. 4) This Court jurisdiction is invoked under Title 28 United States Code, Section 1343 (3); 2201, 2202; Title 42 United States Code, Section 1983 and that the Court of Appeals has refused to decide an important federal questions in conflict with applicable decisions of this Court.

STATEMENT OF THE CASE

In October 1979, Appellant's wife, Michell M. Etlin, willfully deserted and abandoned Appellant, leaving the parties home with their son without any just cause or excuse.

In February 1980, Appellant started to pay voluntarily to the Appellant's wife $200.00 per month as child support for his minor son, Daniel Etlin, born January 20, 1978.

Conceeding to the futility of getting custody by a father in the Virginia courts (especially when both parents are fit) Appellant offered some compromise solutions to his wife on several occassions: a joint custody, which would preserve both parents parental rights, or less desirable, custody to his wife if at least two evenings a week, every other weekend, two months vacation, and some holidays are guaranteed to the Appellant and his son, plus equal participation in decisions concerning his son's development. Appellant's wife has flatly rejected.

In January 1981, a trial was held where permanent custody, child support and counsel fees were decided. Both Appellant's wife and her only witness, Dr. Ganz, lied profusely and committed perjury. Even lying both testified that Appellant loves his son and is a bright person. Appellant's four (4) witnesses, including a physchiatrist, convincingly testified that it is in the best interest of the child, Appellant's son Daniel, to be in

the custody of his father. Moreover, Appellant's witness, Dr. Todhunter, who had been Daniel's pediatrician for 2.5 years, testified that Appellant's wife demonstrated a neurotic preoccupation about her son and that Daniel underwent a deceleration of height and weight growth since he left Appellant's house.

Notwithstanding this fully corroborated evidence as to the Appellant's fitness as a parent and the stark contrast between that evidence and the innuendo-laced, uncorroborated and hearsay evidence submitted by the Appellant's wife and her sole, ill-reputed witness, Dr. Ganz, Appellee Griffith, ignoring the fully corroborated evidence as to Appellant's fitness as a loving and caring parent with the highest education and other things superior to those of his wife, and the stark contrast between Appellant and his wife who committed perjury, lacked stability in place of living, had no steady job, has only a high school education, and has no relatives or friends in the area, did, solely on the basis of illegal and sexist considerations, award custody to the mother. (App. 5) Appellee Griffith has failed to give his comprehensive opinion reflecting a thorough analysis of the presented evidence and specifying the reasons for the ultimate decision, but merely used vague and conclusory language. This constituted violation of the Appellant's twin rights of equal protection under the Fourteenth Amendment and due process under the Fifth Amendment of the United States Constitution. It was a flagrant discrimination against Appellant. Moreover, as it was not already enough punishment for Appellant, the Appelle cut Appellant's visitation down to only two days a month (1 day per two weeks). Even unfit fathers (drunkards, ex-convicts and prostitutes, etc.) are granted more liberal rights of visitation. Appellant's son, after such abrupt interruption in visitations, became withdrawn, capricious and irritable, his physical and mental development has been inhibited. In addition to that

punishment Appellee Griffith awarded only one week per year vacation for the Appellant and his son. No national or religious holidays either, and specifically prohibited Appellant from seeking medical attention or treatment for his son. In addition of these restrictions, the Appellant, becoming a non-custodial parent, automatically lost his parental rights for participating in guidance, physical, intellectual and religious development of his son.

This award deprived Appellant of his constitutionally guaranteed rights to raise children, to love and care for his son, and caused irreparable harm to both Appellant and his son by their summary separation and by imposing condition of a "broken home" on Appellant's son.

On the issues of alimony, child support, and legal fees, the evidence established that Appellant had barely enough money to pay his own living expenses, and yet he was regularly paying $200.00 a month to support his child. Appellant's wife, being a first-rate legal secretary, testified at that hearing that her income each month was only $52.00, and yet her monthly expenses were $2,271.00 and no debts. In her financial statement she showed that she was paying mortgage to the trust she had set up by herself a few months ago in the Appellant's son's name. The Appellant's counsel called Appellee Griffith's attention that Appellant's wife was trying to defraud the Court. That transaction was nothing more than placing part of her own money (about $200,000) from one pocket into her other pocket, then using this money for her own purposes (bought, with cash, a $63,500 condominium apartment) and testifying that she had to pay this money back to her own trust, with some interest of course, while declaring to be impoverished and demanding alimony and more child support from Appellant.

Notwithstanding the direct, fully corroborated evidence as to the source and application of Appellant's income and the constrast between that evidence and the fraudulent evidence submitted by the Appellant's wife, Appelle Griffith, solely on the basis of illegal, sexist considerations, without even asking Appellant's opinion of the amount of money he is able to pay, awarded to her the sum of $500.00 counsel fees, $32.25 for filing and service fees, $456.20 for the Appellant's wife transcript reporter and $400.00 a month as child support, which was well above the amount of money needed to support a child of three (3) years of age according to the United States Government and local department of welfare statistical data. (App. 6) With such award against him Appellant is left with less than $100.00 a month for food, medicines, debts, etc. Obviously, Appellant is forced to defy that oppressive court order to survive, which subsequently creates real threat to Appellant of imprisonment because of contemp. This constitutes involuntary servitude under the Thirteenth Amendment of the United States Constitution, and violates Appellants' right to due process and equal protection under the Fifth and Fourteenth Amendments as well.

The court order, regarding custody, fees, and child support, was in absolute disregard of Appellant's evidence and was in perpetuation of a long state-wide history in the Commonwealth of Virginia of judicial application and interpretation, making such awards only against males. By its conduct, the Commonwealth, acting by, and through, Appelles Robb, Balaes and Griffith, has consistently applied and interpreted its statutory and case law and its pernicious form of blatant discrimination.

On March 17, 1981, Appellant filed his complaint in the United States District Court for the Eastern District of Virginia Alexandria Division, asking to issue its declaratory judgement and preliminary and permanent injunctions against the Appellees, Robb, Balaes and Griffith, enjoining enforcement or execution

of the order of the Circuit Court of Fairfax County and that he be awarded damages. The District Court abstained from hearing the Appellant's complaint. (App.2) The Court of Appeals affirmed that decision (App. 1) on December 30, 1981 and denied Appellant's petition for rehearing (App. 3) on February 2, 1982. (App. 4)

REASON FOR GRANTING THE WRIT

In Santosky v Kramer, 50 LW 4333 this Court emphasized:

> The absence of dispute reflected this Court's historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment.....
>
> The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents.... parents retain a vital interest in preventing the irretrievable destruction of their family life..... Id. at 4335

And further in the foot note 7:

> We therefore reject respondent's claim that a parental rights termination proceeding does not interfere with a fundamental liberty interest.

Appellee Griffith did not have any evidence that positive, nurturing father-child relationships no longer exist when deprived Appellant of his son.

This Court granted certiorari to consider petitioners' constitutional claim in Santosky v Kramer, 450 U.S. 993 (1981)

The essential question in the Appellant's petition to the District Court and then to the Court of Appeals was that child custody and support statutes in Virginia are unconstitutional on their face and as applied.

The Court of Appeals was wrong in its reasoning for abstention and in applying the federal abstention doctrine in this case. In its opinion the Court of Appeals held (App. 1):

> Because custody proceedings are considered ongoing proceedings in Virginia, they afford a disappointed litigant such as Etlin, an adequate opportunity to present his constitutional claims.

No trial court of Virginia has authority to judge on a constitutional validity of Virginia statutes, and it is futile to ask the Virginia Supreme Court for a declaratory judgement because it was the Virginia Supreme Court that has interpreted the Virginia sex nurtual statute, Va. Code Ann. Section 31-15, and made it flagrantly unconstitutional. (See Rowlee v Rowlee, 211 Va. 689; 179 S.E. 2d 461 (1971); Harper v Harper, 217 Va. 477; 229 S.E. 2d 875 (1976); McCreery v McCreery, 218 Va. 352, and Appendices 7,8) Moreover, under Virginia statutues, Virginia Code Ann. Section 16.1-242, 20-108, child custody and support orders may be subject to modification at any time, but under Virginia Case Law the court may revise and alter its decree only if a material change in condition and circumstances has occured. Hammers v Hammers; 216 Va. 30; 216 S.E. 2d 20 (1975);Fetherstone v Brooks, 220 Va. 443; 258 S. E. 2d 513 (1979). No change of circumstances - no hearing. (App. 9,10) Material changes do not happen so often in people's life.

The Court of Appeals has failed to examine the Appellant's complaint in view of the standards for abstention set forth in Younger v Harris, 401 United States 37; Huffman v Pursue, Ltd., 420 United States 592, and other decisions of this Court.

Misuse an/or abuse of Younger principles in Federal Courts is becoming common because in many instances abstention doctrine is used automatically without analyzing each case in light of principles laid down in Younger. In Huffman v Pursue, Ltd., 420 U.S. 592, the Supreme Court held that the District Court should have applied the test laid down in Younger in determining whether to proceed on the merits. In the case on hand abstantion under Younger was inapproriate because Younger doctrine is applied in criminal prosecutions, especially when State criminal prosecution is pending. Then in Huffman it was extended to civil cases which are akin to criminal prosecution. The Supreme Court emphasized, in its

opinion by Mr. Justice Rehnquist, that:

> Strictly speaking, this element of Younger is not available to mandate federal restraint in Civil cases. Id., at 604.

And further explaining why Younger doctrine was extended to a civil case, Mr. Justice Rehniquist wrote:

> ... we deal here with a state proceeding which in important respects is more akin to a criminal prosecution than are most civil cases. Huffman, Supra, at 604.

The case on hand has no similarity with criminal prosecution. Moreover, analyzing it in light of Younger standards, one can see that early intervention was justified under the exceptions recognized in Younger such as: (1) the absence of a pending state proceeding; (2) the challenge statutes are flagrantly and patently unconstitutional; (3) the state court proceedings were conducted in bad faith with an intent to harass; (4) immediate and great irreparable injury can be shown; (5) remedies in the state courts are futile; (6) Appellant set forth substantial issues which have detrimental impact on our society and are worth of review by the Federal Court.

1

There was no such action in the Circuit Court of Fairfax County when Appellant had filed his federal complaint which was three weeks after the state order (App. 5) for the permanent care, custody and control of the minor child was entered. In Steffel v Thompson, 415 U.S. 452 (1974), the court considered whether Younger required exceptional circumstances to justify federal declaratory relief against state criminal statutes when a prosecution was not pending. In concluding that it did not, the court identified more specifically some of the means by which federal interference with state proceedings might violate the principles of comity and federalism on which Younger is based. The court noted that:

> the relevant principles of equity, comity, and federalism 'have little force in the absence of a pending state proceeding.' Id., at 462,

and explained:

> When no state criminal proceeding is pending at the time the federal compalint is filed, federal intervention does not result in duplicative legal proceedings or disruption of the state criminal justice system; nor can federal intervention, in that circumstance, be interpreted as reflecting negatively upon the state court's ability to enforce constitutional principles. Ibid.

As it has been already mentioned, regarding the continuing pending jurisdiction in the Virginia courts, these statutes have benn judicially narrowed by requiring the change of circumstances in order to modify any court decision. That is why the Order (App. 5) is final until there is change of circumstances. (App. 9, 10) On May 29, 1981, Appellant asked the state court for an order to compel his wife to produce documents in order to modify his exhorbitant child support payment without having any change of circumstances. The state court denied that request. (App. 10, Lines 1, 2, 11---23).

That is why on February 12, 1982 Appellant used a loophole and requested an emergency hearing in order to get some meaningful visitation with his son, pending a hearing in June to set custody order aside on the grounds of fraud. Appellant showed at the hearing that only one day of visitation every other weekend is an unreasonable restriction of the appellant's contacts with his son and it is damaging to the son's physical and mental development, that the parties son has the same needs to share of his father's love, care, and guidance as of his mother's. (App. 23, p. 886) Appellant asked, on a temporary basis, to allow him to see his son every weekend from Friday to Sunday, two evenings every week and two week vacation in winter and on Easter. No evidence was presented to refute the appellant's testimony and yet he was allowed only two extra days monthly.

2

Virginia child custody and support status, Va. Code Ann. Section 20-107, 20-108, 31-15 are unconstitutional on its face because of their vagueness, and flagrantly and patently unconstitutional as applied, because of discrimination against a whole

class of its citzens -- parents of the male sex.

VAGUENESS

Virginia child custody and support statute Va. Code Ann. Section 20-107 (App.11) does not set standards to define what is in the best interest of a child and how to measure those standards, what is unfit parent and how to measure that unfitness to justify termination his/her parental right for a custody of its child, what custody arrangement should be when both parents are fit and both still have equal parental rights.

Although the amount of child support is supposed to be sufficient to cover a child's, or children's needs, this statute (App.11) does not even mention these needs or standards to measure it, but needs and ability of parents to pay child support, the size of which no one knows.

The Supreme Court has held that:

> the exaction of obedience to a rule or standard which is so vague and indefinite as really to be no rule or standard at all... A. B. Small Co. v. American Sugar Ref. Co., 267 U.S. 233, at 239.

In the case on hand Appellee Griffith failed to give his opinion as far as finding facts, weighing them, and why his order, depriving Appellant of his son, was in the best interest of the child, but merely used vagued and conclusory language. (App.5) This Court often pointed out that such arbitrary application of a law is in violation of Due Process:

> We have little doubt that the Due Process Clause would be offended " if a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest." Quilloin v Walcott, 434 U.S. 246, 255 (1978) quoting Smith v Organization of Foster Families, 431 U. S. 816, 862-863 (1977) (Justice Stewart, J concurring in the judgement)

In Santosky v. Kramer, 50 L W 4333 it held:

> Any parens patriae interests in terminating the natural parent's rights arises only at the dispositional phase, after the parents have been found unfit. Id. at 4338 n.17

Explaining the danger of a vague statute, expecially in family relationships, the Federal Court, in Alsager v. District Court of Polk City, Iowa, 406 F. Supp. 10(1975) held:

> Due Process requires that state to clearly identify and define the evil from which the child needs protection and to specify what parental conduct so contributes to that evil that the state is justified in terminating the parent-child relationship. Id., at 21.

And further the Court continued:

> Under Iowa's current scheme, State officials may subjectively determine, on an ad hoc basis, what parental conduct is "necessary" and what parental conduct is "detrimental". The termination of the parent-child relationship in any given case may thus turn upon which state officials are involved in the case, rather than upon explicit standards reflecting legislative intent. This danger is especially grave in the highly subjective context of determining an approved mode of child-rearing. The Court finds these standards unconstitutionally vague in that they are permeated with the "dangers of arbitrary and discriminatory application." Id., at 18, 19.

Appellee Griffith awarded a $400.00 a month per child of three (3) years against Appellant (App. 5-p.2) but in Schaefer v. Schaefer, in chancery NO. 66726 he awarded $10.00 against his mother for a child of same age, without explanation why the Appellant son's needs are 40 times higher than of Schaefer's.

On different occassions this Court emphasized the importance of standards of proof:

> The standard of proof is a crucial component of legal process, the primary function of which is "to minimize the rise of erroneous decisions" Greenholtz v. Nebraska Penal Inmates, 442 U. S. 1 at 13 (1979).

And in Lassiter v. Department of Social Services, 452 U.S. 18:

> A parent's interest in accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one. Id., at 27

In Addington v. Texas, 441 U.S. 418 (1979) this Court, declared that the function of a standard of proof, as the concept, is embodied in Due Process Clause.

SEX DISCRIMINATION AND DEPRIVATION OF A PARENT OF HIS CHILD ARE UNCONSTITUTIONAL

The Constitution for the United States guarantees equal justic law, and prohibits "legal" discrimination based on a citzen's sexua anatomy.

The United States Supreme Court and some Federal Courts held in many recent cases that statutes based solely on sex discrimination are prohibted by and are violative of the equal protection clause of the Fourteenth Amendment. Craig v. Boren (1976), 429 U.S. 190; Frontiero v. Richardson (1973), 411 U. S. 677. Included specifically within such prohibition is discrimination based upon a citizen's sexual anatomy in such relevant area as the equal rights of parenthood. Smith v. O. F. F. E. R., 431 U. S. 816, 97 S. Ct. 2094, 53 L. Ed. 2d 14 (1977); Stanley v. Illinois, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972); Duchesne v. Sugarman, 566 F. 2d 817 (2d Cir. 1977); Alsager v. District Court of Polk County, 406 F. Supp 10 (S.D. Iowa 1975), aff'd in part, 545 F. 2d 1137 (8th Cir. 1976); Reed v. Reed, 404 U.S. 71

The Supreme Court has made it clear that when state law regulating divorce comes into conflict with the Fourteenth Amendment, then it is the duty of the federal courts to resolve the conflict in favor of the constitution. Boddie v. Connecticut, 401 U. S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971), Wymelenberg v. Syman, 328 F. Supp. 1353 (E.D. Wisc. 1971); Geisinger v. Voss, 352 F. Supp. 104 (1972).

Federal courts have become increasingly protective of the constitutional rights of family unity. In Meyer v. Nebraska, 262 U.S. 390, 43 S. Ct. 625, (1923), this Court determined that the "liberty" guaranteed by the Fourteenth Amendment [w]ithout doubt, ... denotes ... the right of the individual ... to marry, establish a home, and bring up children." Id., at 399, 43 S. Ct. at 626. Similarly, in Pierce v. Society of Sisters, 268 U.S. 510, 45 S. Ct. 571, 69 L. Ed. 1070 (1925), this Court affirmed the enjoining of an Oregon statute which was deemed to interfere "with the liberty of parents and guardians to direct the upbringing and education of children under their contol." Id. at 534, 35,

45 S. Ct. at 573. In Prince v. Massachusetts, 321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944), this Court noted that "it is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the State can neither supply nor hinder.... And it is the recognition of this that these decisions (Meyer and Pierce)have respected the private realm of family life which the state cannot enter." Id. at 166, 64 S. Ct. at 442.

Virginia judges' vocabulary is a clear indication of their defiance to that private realm of family life. Appellee Griffith permitted to the Appellant only "visitation" priviledges.(App.5 p.2) Another judge of the same Court in his order of February 16, 1982 (App. 26 p. 3) mentioned again parental "visitations" rights only. Both orders disregard Appellant's fundumental parental rights like love, care, guidance of his child upbringing and education, but recognize only his limited visitation rights. Presumption of "tender years" has dominated Virginia courts for decades, discriminating against fathers. The mother is generally recognized as the natural custodian of minor children of tender years. Rowlee v. Rowlee, 211 Va. 689, 179 S.E. 2d 461 (1971) (App. 7)

Although the Supreme Court of Virginia has pointed out in Harper v. Harper 217 Va. 477, 229 S.E. 2d 875 (1976) that there shall be no "presumption of law" in favor of either parent, the Court has several times stated that the "tender years presumption" is in fact no more than a permissible inference, which leaves in this law a lot of room on its face for discrimination against fathers. See, also, McCreery v. McCreery, 218 Va. 352.

A Virginia statute §31-15 language has been recently made sex neutral. But there have not been any changes in flagrant and patent violation of this law as applied. Charles E. Friend, in his book, The Law of Evidence in Virginia, (App. 8), states:

> Despite the use of the term "inference" in these decisions, and contrary to the express language of the statute, it is apparent both from the appellate opinions and from the manner in which the trial courts are applying the rules discussed, that, in effect, there is a strong presumption favoring the mother in such cases.

And further:

> ... but counsel should be aware that in pratice a presumption is operating here which is, at the very least, a true presumption; which appears to shift the burden of persuasion to the father; and which is, in some trial courts at least, virtually irrebuttable.

Two recent cases (App. 12, 13) contribute to the evidence of patent discrimination against males in the Fairfax County courts. In May v. May, it was admitted that both parents were fit, and yet no equal responsiblitiy was suggested to the parents, no equal time to spend with the child was suggested either. Custody of the parties son was awarded to the mother with limited visitations to the father. In Holsband v. Holsband, evidence showed that mother committed adultery and lied to the court, and again custody of the parties son was awarded to the mother with "reasonable" visitations to the father, and an exhorbitant amount of child support which exceeded the father's take-home pay.

There is not one case in Virginia in which both parents contested custody, both parents were fit, and "other things were equal," which resulted in an award by the court of custody to the father.

P. Robinson, President of Fathers United for Equal Rights in Virginia shows (App. 14) that during his long period of association with the organization he has learned about many custody cases, and that Virginia Courts, in divorce proceedings, grant mothers custody of children out of habit, and to the repeated detriment of the children.

Virginia custody statutes, especially as authoritatively construed and actually applied by the courts of the State of Virginia,

erects, within child custody contests in divorce actions, a rank discrimination, among litigants otherwise similarly situated, which is based solely upon the inherently suspect, sociologically irrelevant, and constitutionally impermissble criterion of the fortuitous circumstances of the litigants' respective sexual anatomies, and that the said flagrant and patent statutory preference and judicial discrimination in favor of female child custody contestants and against similarly situated male child custody contestants, is unlawful and void, and repugnant to the Constitution of the United States under the Fifth and Fourteenth Amendments.

3

The state court proceedings were conducted in bad faith with intent to harass. State court failed to stay proceedings as Appellant requested (App.15) There was very little chance for a male parent to get justice in Virginia courts, there is no chance at all for the Appellant now because a judge and state officials are parties in this suit.

At the beginning of every hearing in the State Court, Appellant's wife's counsel complained to a judge that Appellant is seeking vindication of federal rights in the Federal Court and that a State judge is a codefendant. As a result, each of those hearings was conducted in bad faith and with an intent to harass and intimidate, despite the fact that Appellant had all grounds to get judgement in his favor.

At the April 23, 1981 hearing for the Rule to Show Cause why Appellant is not complying with the court order (App. 5) of February 26, 1981, Appellant's wife's lawyer reminded the judge (App. 16) about the Appellant's federal complaint. Appellant showed unequivocally that he was complying with the court order in every respect but the amount of child support and costs, that he was diligently paying the amount of child support according

to his ability, that his wife and her lawyer lied to the court about the facts in their affidavit for the Rule. Neither the judge nor Appellant's wife could indicate any figure in Appellant's list of expenses which could be reduced in order for the Appellant to pay the full amount of child support. It was evident that the failure by the Court to examine adequately Appellant's financial ability made him unable to obey the Order, and was in violation of the Virginia child support and maintenance statute (Va. Code Annot. §20-107 (App.11)) that the amount of payment depends on parent's ability to pay.

> ... the inability of an alleged contemnor, without fault on his part, to render obedience to an order of the court, is a valid defenseto a charge of contempt. Laing V. Com., 205 Va. 511, 137 S.E. 2d 836 (1964).

But this matter of law was not convincing enough to a new judge of the same Fairfax County Circuit court (Bruce Bach), despite the fact that Appellant started paying $200.00 child support a year before the Order was entered, threatened to put Appellant in jail next time, and "advised" (App. 17, p. 29, 30):

- that Appellant sell his house (where his son was born and knows every corner);
- that Appellant get a second job and pay his wife the rest of the so called child support.

This was in clear violation to Appellant's dual constitutional rights guaranteeing liberties "to marry, establish a home, and bring up children", Meyer v. Nebraska, 262 U.S. at 399, and to be free from peonage. Entering an order, (App. 5) which compels Appellant to work for his wife and also to pay his wife's share of child support, in addition to his own share, and forcing Appellant to sell his property and hold two jobs in order to make those payments is nothing else but peonage.

> A "peon" is compelled to work for his or her creditor until his or her debts are paid. In re Lewis, 114 F. 963, 967 (N. D. Fla. 1902)

A Civil Rights law passed in 1867 (42 U.S.C. Section 1994) in part provides:

> The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States.

The April 23 hearing is a clear illustration where the State proceeding is conducted with intent to harass or in bad faith and early intervention was justified even under the exceptions recognized in Younger v. Harris, 401 U.S. 37.

In Younger the Court also considered whether the policy of non-interference had been modified by the Court decision in DOMBROWSKI v. PFISTER, 380 U.S. 479 (1965), and the Court observed that:

> ... the arrests and threatened prosecutions in Dombrowski were alleged to have been in bad faith and employed as a means of harassing the federal court plaintiffs.

Referring to the Dombrowski case, Mr Justice Rehnquist, in the opinion of the Court, explained:

> That case was thus within the traditional narrow exceptions to the doctrine that Federal Courts should not interfere with State prosecutions. Huffman et al v. Pursue Ltd., 420 U.S. 602.

At that April 23 hearing, Appellant also asked to let him present his evidence in support of a modification of his child support payment, for the Appellant is unable to pay and the Court has failed to examine neither his son's needs nor the Appellant's ability to pay, which constituted a violation of due process. Appellant's request was denied. A week later, Appellant filed a motion for another hearing to modify his child support and time for the hearings was set for June 2, 1981. But it was sufficient for the Appellant's wife's counsel to make only one telephone call (without any motion being filed) to continue that hearing indefinitely. These are clear illustrations where the State proceedings are conducted in bad faith with an intent to harass.

At the hearing of May 14, 1981 for the Decree of Reference, Appellant's wife's lawyer again insinuated about Appellant's intention to bankrupt his wife, etc. and as a result the Commissioner harasses Appellant (App. 18 p. 21, 16) expressing his antipathy towards Appellant and forcing him at the beginning of the hearing to pay the Court Reporter and Commissioner's fees witout having heard the evidence and knowing who will be at fault. In addition to harassment, it was a violation of the equal protection clause of the Fourteenth Amendment.

At the May 29, 1981 hearing, Appellant asked for an order to compel his wife to produce documents in order to modify his child support payments, and eliminate the existing every-day threat to be convicted in contempt. Again, Appellant's wife's lawyer complained to the judge about Appellant's federal suit (App.19), and, as a result, despite the fact that Appellant showed that his wife and her lawyer had never, in the past, produced all documents requested, and that both of them had profusely lied at each hearing, there are no facts established (App.20), and that's why it is not possible to show any change of circumstances unless he gets all documents requested. The judge refused to enter that Order. (App. 20)

On March 22, 1982, Appellant's salary started to be garnished without even proper service on him or having an order for execution of the judgement of the April 23, 1981 hearing.

In Younger it was stated that to justify federal injunctive relief against state the movant must show "great and immediate irreparable injury," 401, U.S. at 46, only if the prosecution was conducted in good faith and without an intent to harass. Id., at 54.

Although in the case on hand, the State Court bad faith and intent to harass does not require to show injury, great and irreparable injury exists.

Immediate and great irreparable injury is inflicted because of existing statutes, as applied, deprive the Appellant's son of his father's love and care. Appellant's son, after the abrupt interruption in contacts with the father, as a result of the Appellee's order (App. 5), became withdrawn, capricious and irritable, his physical and mental development has been inhibited.

> For a child, the consequences of termination of his natural parent's rights may well be far-reaching....
> Some losses cannot be measured....
> Santosky v. Kramer, 50 LW at 4337, n.11

In the case similar to the case on hand, Davis v. Page, 442 F. Supp. 258 (1977), a child, Carl Thor Davis, was adjudicated dependent and was removed from his parents. The child's mother obtained weekend home visits with her son, and, in a year, finally secured the return of her son. The Federal Court stated that:

> the order adjudicating Carl Thor Davis dependent carried far-reaching legal consequences, Id., at 261

referring to the testimony of Sally A. Provence, M.D., Albert J. Solnit, M.D., and Andre P. Derdeyn, M.D. about the resulting long-term damage to the parent-child relationship described in their affidavits.

At the custody hearing of January 25, 1981 in the State Court, the Appellant's expert witness, Helen J. Ossofsky, M.D., showed the reasons why it was in the best interest of the Appellant's son to be in his (Appellant's) custody, or at least, to maintain very close contacts. Appellee L. Griffith, ignoring that evidence and depriving Appellant of his son, had intruded impermissibly on the private realm of Appellant's and his son's life.

> If a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest, I should have little doubt that the State would have intruded impermissibly on

"the private realm of family life which the state cannot enter." Prince v. Massachusetts, 321 U.S. 158, 166, 64 S. Ct. 438, 88 L. Ed. 645.

The 1978 National Institute of Mental Health Research Conference on Divorce has reached a conclusion where both sexes nurturing capacity is recognized and the Conference endorsed continous and meaningful contact with the non-custodial parent is critical to the child's subsequent adjustment.

The Los Angeles Consiliation Court's pamphlet (App. 22, p. 1,2,6) Cooperative Parenting Following Dissolution: Your Child Needs Both of You, notes:

> way to minimize the stress and avoid the long-term problems of children of divorcing families is for the youngsters to maintain continued and conflict-free contact with both parents. This will reassure the child of the continuing love of both parents and make it clear that he or she has not been abandoned by either parent.

This pamphlet was prepared by a committee of judges, mental health professionals, attorneys and parents with years of experience in working with parents going through the divorce.

Another aspect of injury to a child, if he is deprived of one parent as a result of divorce, was emphasized in the latest book, Divorce, Child Custody and the Family, (App.23, p.884) which was done in cooperation with numerous individual professionals, groups and offices, experts in child development.

Quoting from the Group for the Advancement of Psychiatry's Report on parenthood:

> Despite the fact that one parent can rear children and meet their physical needs, children need two parents for complete psychological growth and development. What this means is that, in order for the child to conceptualize himself as a developing person, he must identify himself with two parents - a man and a woman, a father and a mother.

Both parents are important for the child's development, but many studies show that the father's influence is especially important for a child's development.

Dr. Henry B. Biller, of the Unversity of R.I., in his book "Father, Child, and Sex Role," which is regarded as one of the classics in the neglected field of paternal determinants of personality development, states:

> "The father is a model for his child. His postive involvement facilitates the boy's cognitive functioning, his ability to control his impulses and to function independently and responsibly, and his overall interpersonal competence."

Dr. Streshinsky, in his work "How Divorce Really Affects Children" found that:

> "The only children satisfied with the visitation situation were those who were able to see their father several times a week. Others felt deprived..."

Statistics compiled by the United States Department of Justice show that most juvenile delinquents are from "broken homes." A number of social scientists' conclusion, which society does not like to accept, also was that one of the main reasons for juvenile delinquency is an absent father:

> "An absent father will more often result in an antisocial behavior in that family's children, as a result of the psychological process, even if the absence causes little economic hardship," Dr. L. Mosher: "Father Absence and Antisocial Behavior in Negro and White Males, Acta Paedo-psychiatriea, 1969, Volume 36, Fascicule 6/7, p. 186-202. McCord, J., McCord, W., and Thuber E., "Some Effects of Paternal Absence on Male Children," J. Abnorm. Soc. Psychol., 64, 361-369 (1962). Barton, R.V. and Whiting, J.W.M. Absent Father and Cross-Sex Identity. Merrill-Palmer Quart. 7, 85-95 (1961).

The irreparable harm has been done to the Appellant's son by being summary removed from his father after January 1981 custody hearing. Drs. Provence Robitscher and Solnit, in their expert testimony in Roe v. Conn, 417 F. Supp. 769 (1976) summarized their views as follows:

> Summary removal of a young child from a parent... disrupts and grossly endangers what he most needs, that is, the continuity of affectionate care from those to whom he is attached through bonds of love. Summary removal should be allowed only under conditions in which physical survival is at stake. (App.21)

Emphasizing the grave consequences of the parent's absence, well known researchers J. Goldstein, A. Freud, and A. Solnit indicate in their book "Beyond the Best Interest of a Child," as follows:

> "Where a parental care is inadequate, this may be matched by deficits in the child's mental growth. Where there are hurtful interruptions, the child's vulnerability and the fragility of the relationship become evident, the child regresses along the whole line of his affections, skills, achievements and social adaptation... Emotionally and intellectually an infant and toddler cannot stretch his waiting more than a few days without feeling overwhelmed by the absence of parents ... The significance of parental absences depends, then, upon their duration, frequency, and the developmental period during which they occur. The younger child, the shorter is the interval before a leave-taking will be experienced as a permanent loss accompanied by feelings of helplessness and profound deprivation. Since a child's sense of time is directly related to his capacity to cope with breaches in continuity, it becomes a factor in determining if, when, and what urgency the law should act."

Commenting on New York court's assumption that termination of the natural parent's rights invariably will benefit the child, this Court held:

> This is a hazardious assumption at best. Even when a child's natural home is imperfect, permanent removal from that home will not necessarily improve his welfare. Santosky v. Kramer 50 LW at 4338

This Court declared that a natural parent's:

> desire for and right to" the companionship, care, custody, and management of his or her children" is an interest far more precious than any property right. Lassiter v. Department of Social Services, 452 U.S. 18 at 27

Irreperable injury has been done to the Appellant as well.

Congress requires:

> "Evidence beyond a reasonable doubt" for termination of Indian parental rights, reasoning that "the removal of a child from the parents is a penalty as great, if not greater, than a criminal penalty..." H.R. Rep. No. 95-1386, p. 22 (1978)

In addition to the damages to the physical and mental development of a child's intellectual development has suffered as well.

The Supreme Court, in Brown v. Board of Education, 347 U.S. 483, 493, 74 S. Ct. 686, 691 (1954) pointed out:

> Today, education is perhaps the most important function of state and local governments. .... It is the very foundation of good citizenship. Today, it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonbly be expected to suceed in life if he is denied the opportunity of an education.

A child's education starts in his family, by his parents. Depriving Appellant's son of his father is depriving him of that parent's cultural values; it is denying him the opportunity of an education.

5

Remedies in the State Courts are futile. According to the 1980 Report of the Judicial Counsel of Virginia to the General Assembly and Supreme Court of Virginia (p. 20) in 1979 Circuit Courts in Virginia disposed of 122,100 cases. Of this amount, appellate review was accomplished in only 239 cases, or something less than 0.3 percent. There is no intermediate appellate court in the Virginia judicial system, the sheer numbers make out a prima facie case of denial of due process because Circuit Judges, such as Appellee Griffith, are given virtually unreviewable discretion, license to do as they please, without concern or anxiety over review, because the simple facts of life are that in Virginia a judge's chance of any kind of review are only 0.3 in 100. Stated another way, a judge's chance of not being reviewed over 99 percent, and there is no automatic right for appeal in the Supreme Court of Virginia, which is a clear denial of due process.

Appellant opines that the odds are even greater when domestic relations cases decided against males are concerned.

In Younger the Court held that:

> .... it is a strong judicial policy against federal intervention with state criminal proceedings when a movant has an adequate remedy at law. 401 U.S. at 43.

Evidently, an adequate remedy does not exist in Virginia Courts. It is the Supreme Court of Virginia that made the statutes, challenged by Appellant, flagrantly unconstitutional by defying their sex neutral language and openly applying presumption of "tender years" which discriminates against a whole class of Virginia citizens -- parents of the male sex. To ask the Supreme Court of Virginia to declare presumption of "tender years" unconstitutional would be like putting a fox into a chicken coop.

In Gibson v. Berryhill, 411 U.S. 564 (1973), the Supreme Court held that it had jurisdiction because there the enjoined State proceedings were before a biased administrative body which could not provide a necessary predicate for a Younger dismissal, that is:

> .... the opportunity to raise and have timely decided by a competent State tribunal the federal issues involved. Id., at 577.

As Mr. Justice Stevens put it:

> A principled application of the rationals of Younger v. Harris, 401 U.S. 37, forecloses abstention in cases in which the federal challenge is to the constitutionality of the state procedure itself. There should be no abstention unless the state procedure affords a plain, speedy, and efficient remedy for the federal wrong... In my judgment, when a state procedure is challenged, an adequate forum must be one that is sufficiently independent of the alleged unconstitutional procedure to judge it impartially and to provide prompt relief if the procedure is found wanting. Juidice v. Vail, 430 U.S. 327, 339.

State officials are parties in this suit. One must not strain hard to discover why state interest here in having federal rights adjudicated in a state rather than federal forum.

> The very purpose of Section 1983 was to interpose the federal courts between the states and the people, as guardians of the people's federal rights... Mitchum v. Foster, 407 U.S. 242, 92 S. Ct. at 2162.

In a federal court, this suit, on hand, will be between purely private parties.

6

Appellant sets forth substantial constitutional issues worthy of REVIEW by the Federal Court.

Continous deprivation of a father of his child has detrimental social-economic effect on our society. (App. 23 p. 795, 797) A New York Court, relying on the Fourteenth Amendment, said, that neither the child's interests nor the state's interests were served well by the "tander years" doctrine, and it was therefore often detrimental as well as unconstitutional. State ex. Rel. Watts v. Watts, 35 N. Y. S. 2d. 285 (1976).

The State registers no gain towards its declared goals when it separates children from the custody of fit parents. Stanley v. Illinois, 405 U. S. at 652.

Unreasonable and irrational approach in determining child custody creates "broken home" conditions which generate the most of juvenile delinquents.

Fathers who are deprived of their children and yet ordered to pay an exorbitant amount of child support may be forced to leave the area in which their children live, and, as a result, most mothers apply for help from Federal funds (AFDC). (App. 24,25) Quite often, fathers leaving the area snatch their children and take them along.

A number of Federal programs, laws and regulations, which expend a lot of federal funds, have been created to cure the consequences, instead of the causes, of these problems. The nationwide federal/state child support enforcement program, established as a result of the additon of Title IV-D to the Social Security Act through the enactment of Public Law 93-643 in 1974, strengthens the legal provisions for enforcing the child support obligation of an absent parent.

States are required, under this new legislation, to operate a child support enforcement program through a separate state-wide organizational unit as a condition for the state's participation in federal funding available under the Aid to Families with Dependent Children (AFDC) program. The federal government is responsible for monitoring and evaluating these state programs.

States are requred by 45 Code of Federal Regulations 302.53 to include, in their plans for implementing their child support enforcement program, a formula for determining the amount of this obligation.

Virginia is a recipient of federal fundings under the Aid to Families with Dependent Children program, which totaled $843 Million in 1977. But Virginia courts do not have any formula for determing a child's needs, instead they use, quite arbitrary, a percentage of the parents income.

In September, 1980, the Virginia Welfare Department paid $13,824,258 to [illegible],847 adults with 117,418 children under the Aid to Families with

Dependent Children program.

With one hand Virginia courts create families with dependent children by applying unconstitutional statutes; with the other hand Virginia takes, from the Federal Government, money to help those families which they have created.

The public is becoming more and more concerned about social problems which are created by judges in divorce procedures. The Congress, in a very recent law (P. L. 96-611, Section 7(a), H. R. 1406, Dec. 28, 1980), finds that:

(1) there is a large and growing number of cases annually involving disputes between persons claiming rights of custody, and visitation of children, under the law;

(2) the laws and practices by which the courts of those jurisdictions determine their jurisdiction to decide such disputes by the courts of other jurisdictions, are often inconsistent and conflicting.

Recently, the Office of Child Support Enforcement started a Federal Demonstration Grants program. Funding is authorized under Section 1110 of the Social Security Act. One of these programs priority projects is the "Establishment of Uniform Support Obligations." Explaining the importance of that project, the instruction says:

> States are required by Title IV-D of the 1974 Social Security Act to establish and to enforce child support obligations of absent parents of recipients of Aid to Families with Dependent Children and non-AFDC recipients. The amounts of the obligations that are being established, however, vary widely, not only from jurisdiction to jurisdiction, but also within jurisdictions. Even when comparing cases with similar circumstances these variations persist.

Among other priority projects is a State Study of Absent Parent's Ability to Pay Child Support (OCSE 81-4):

> One of the important questions involving child support enforcement is whether the absent parent has the ability to pay.

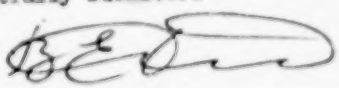
All these programs which involve a lot of Federal money and a lot of people, both on a state and Federal level, are results of irrational determination of child custody and support by courts, and unreasonably high amount of support, which put a father automatically in a position of contempt of the court Order, and he has to hide in order to avoid prosecution.

To reduce the number of "broken homes," to reduce juvenile delinquency, to reduce Federal spendings in subsidizing "broken homes," and fighting juvenile delinquency, to stop violations of Constitutional rights of a whole class of Virginia citizens, this Court has a compelling interest to enjoin Virginia's statutes in custody and child support and declare them unconstitutional.

CONCLUSION

For the foregoing reasons, Appellant, Vladimir N. Etlin, respectfully requests that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted



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